

**FILED**

APR 15 2005

CHARLES J. WALSH

J.S.C.

IN RE: DIET DRUG LITIGATION  
VENUED IN BERGEN COUNTY

BRIGMAN, FRANKIE A.  
GIBSON, SARAH ANN  
GRABER-KEITH, PAMELA L.  
MORRISON, LEA M.  
WARD, ELIZABETH W.

TRIAL GROUP 1C CASES

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY  
MASTER DOCKET NO. BER-L-13379-04 MT

DOCKET NO. BER-L-2547-04 MT  
DOCKET NO. BER-L-2561-04 MT  
DOCKET NO. BER-L-2562-04 MT  
DOCKET NO. BER-L-2565-04 MT  
DOCKET NO. BER-L-2571-04 MT

**PRETRIAL ORDER  
FOR TRIAL GROUP 1C CASES**

THIS MATTER having come before the Court for multiple case management conferences during which the Court has determined that certain cases from discovery Group 1 are to be prepared on an expedited basis for trials commencing in May 2005, and good cause having been shown,

IT IS on this 15th day of April 2005, ORDERED as follows:

1. The court imposes the following deadlines for all Trial Group 1C cases set for trial on May 31, 2005.
2. The Trial Group 1C cases are: Brigman; Gibson; Graber-Keith; Morrison; and Ward.

**Discovery Completion**

3. Fact discovery may continue through the period of expert discovery. Completion of discovery includes supplementation as required under R. 4:17-7. The parties are hereby ordered to supplement their discovery responses as required under R. 4:17-7.

**Expert Witness Depositions**

4. Plaintiffs shall serve all reports, curriculum vitae and fee schedules for all experts no later than May 2, 2005.
5. Defendants shall serve all reports, curriculum vitae and fee schedules for all experts no later than May 16, 2005.
6. Expert depositions shall be concluded by May 24, 2005.

**Exhibit, Witness and Deposition Designations**

7. The parties shall serve no later than April 13, 2005, their witness list, exhibit list, and page/line designations for all depositions that they intend to introduce affirmatively at trial, except for depositions taken after April 6, 2005, for which designations are due one week from receipt of a final transcript. The witness list shall specify whether the witnesses will be produced live or through deposition testimony. All exhibits shall be available to the opposing party for inspection and copying on or before April 22, 2005, upon written request.
8. All proposed trial exhibits shall be pre-marked for identification. Exhibits that relate only to one plaintiff shall be marked with color-coded exhibit markers so that all exhibits relating to a particular plaintiff bear color-coded exhibit markers unique to that plaintiff.
9. The parties shall serve no later than April 27, 2005, objections, counter-designations and rebuttal designations to designations served in accordance with paragraph 7, except for counter-designations from depositions taken after April 6, 2005, which shall be served one week from service of designations pursuant to paragraph 7. The parties shall also serve rebuttal exhibits and witnesses no later than April 27, 2005.

10. The Court shall conduct a hearing prior to trial to consider unresolved objections to deposition testimony designations.

#### **Dispositive and Non-Dispositive Pretrial Motions**

11. The parties shall serve all motions, including dispositive motions, motions directed to the admissibility of expert evidence, and evidentiary *in limine* motions, no later than May 13, 2005.

12. The parties shall serve oppositions to such motions no later than May 20, 2005.

13. The parties shall file and serve replies to such motions no later than 10:00 a.m. on May 25, 2005.

14. The Court shall hold hearings on such motions on May 26 and 27, 2005.

#### **Pretrial Hearing**

15. Before the time of the pretrial hearing and after the parties exchange deposition designations, witness lists, exhibit lists and motions, the parties shall meet and confer to attempt to resolve as many disputes as possible.

16. The Court shall hold pretrial hearings on May 26 and 27, 2005, to resolve outstanding issues related to deposition designations, witness lists, exhibit lists and remaining motions.

#### **Jury Questionnaires**

17. The jury questionnaire attached to this order as Exhibit A shall be distributed to the initial prospective jurors and all subsequent prospective jurors as necessary. Upon completion, the questionnaires will be provided to counsel. Counsel shall make three copies of the questionnaires and distribute one copy to each party and the court. Upon distribution of the copies, counsel will have a minimum of two hours to review the

questionnaires before jury selection begins. No additional reproductions of the jury questionnaires are permitted, and each party shall return its copy of the questionnaires to the Court upon completion of the jury selection process. Failure to comply with this directive will result in the initiation of contempt proceedings against the delinquent party.

#### **Juror Notebooks**

18. A juror notebook, in a form to be approved by the court, shall be provided to each juror at the commencement of trial.

#### **Peremptory Challenges**

19. Plaintiffs shall jointly have 15 peremptory challenges and Wyeth shall have 15 peremptory challenges.

#### **Jurors**

20. The jury will consist of nine jurors, of whom six will deliberate and three will serve as alternates. The verdict will require five of six jurors unless the parties agree to a seven out of nine verdict.

#### **Trial Procedures**

21. The parties shall provide 24 hours' notice of all permitted deposition excerpts they seek to introduce at trial, reflecting the court's rulings on objections, counter-designations, and rebuttal designations.

22. The parties shall provide 24 hours' notice of all live witnesses that they intend to call at trial as well as any exhibits, graphics, or demonstratives to be used with that witness. Graphics, demonstrative aids and documents to be used in opening and closing statements shall be disclosed 24 hours in advance of such statements.

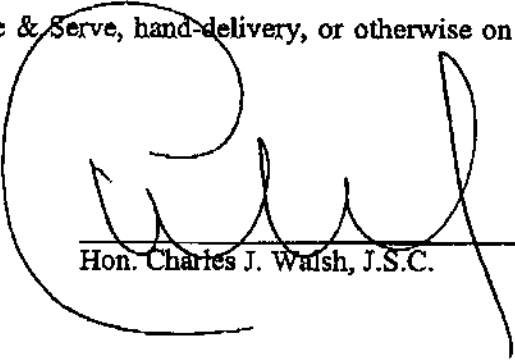
23. The Court may conduct any Rule 104(a) hearings on May 26 and 27, 2005.

24. Separate proposed jury charges are to be submitted to the court by May 13, 2005.

25. Opening statements shall be limited to 75 minutes.

**Service**

26. Service of documents pursuant to provisions of this Order shall be delivered to the opposing counsel by Lexis/Nexis File & Serve, hand-delivery, or otherwise on the date indicated.



Hon. Charles J. Walsh, J.S.C.